



**US Army Corps
of Engineers**
Huntington District

Public Notice

In reply refer to:

Public Notice No. 200400410

Issuance Date:

September 24, 2004

Stream:

UT Alum Creek

Expiration Date:

October 24, 2004

Address comments to:

US Army Corps of Engineers, Huntington District
602 Eighth Street
ATTN: CELRHE
Huntington, West Virginia 25701-2070

PUBLIC NOTICE: The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

REGULATORY PROGRAM: Since its early history, the U.S. Army Corps of Engineers (Corps) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the Corps Regulatory Program.

SECTION 10: The Corps is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the United States (U.S.). The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404: The Corps is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

TO WHOM IT MAY CONCERN: The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act. This notice serves as the Corps of Engineers' request to the West Virginia Department of Environmental Protection to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Min, Inc.
Post Office Box 1109
Beckley, West Virginia 25801

LOCATION: The proposed project is located in an unnamed tributary of Alum Creek, Hickory Gap Branch and Chestnut Log Hollow, near Gilbert, in Magnolia and Stafford Districts of Mingo County, West Virginia as depicted on **Figure 2A** (attached) titled "Stream Delineation Overview."

Valley Fills 1 and Sediment Pond J would result in disturbances to an unnamed tributary of Alum Creek. Alum Creek flows into Tug Fork, a navigable water of the United States (U.S.). Valley Fill 2 and Sediment Pond I have and would result in disturbances to the Hickory Gap Branch. Valley Fill 3 and Sediment Pond K would result in disturbances to Chestnut Log Hollow. Hickory Gap Branch and Chestnut Log Hollow flow into Left Fork of Ben Creek. Ben Creek flows into Tug Fork, a navigable water of the U.S. The proposed project area is located on the Wharncliff and Majestic USGS quadrangles.

DESCRIPTION: The applicant has requested an After-the-Fact permit to authorize completed and proposed activities in waters of the U.S. in conjunction with the Patton No. 11 Surface Mine. The applicant has discharged fill material into Hickory Gap Branch in conjunction with the partial construction of one valley fill (No. 2) and completed construction of an associated sediment pond (I). Additionally, the applicant proposes to complete construction of Valley Fill 2 and construct two additional valley fills (No. 1 and 3) and two associated sediment ponds in jurisdictional waters of the U.S., including wetlands. Each valley fill encompasses a watershed of less than 250 acres, ranging from approximately 56 acres to 155 acres, as detailed on **Table A** of this public notice.

The overall project (unauthorized and proposed) would permanently impact 1,650 linear feet (0.391 acre) of intermittent stream channels, 3,776 linear feet (0.465 acre) of ephemeral stream channels, and 0.147 acre of jurisdictional emergent wetlands. The unauthorized construction of Pond I has impacted 850 linear feet (0.260 acre) of intermittent stream channel. In addition, the project would temporarily impact an additional 700 linear feet (0.117 acre) of intermittent stream channel and 400 linear feet (0.007 acre) of ephemeral stream channel. **Table B** of this public notice details the mining activities and corresponding information with respect to the impact locations and stream loss (linear feet and acres).

The West Virginia Department of Environmental Protection (WVDEP) approved the surface mining permit application (Permit S-4004-01) on September 6, 2001 pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The WVDEP approved the applicant's National Pollutant Discharge Elimination System (NPDES) permit on August 16, 2001 pursuant to Section 402 of the Clean Water Act.

The applicant's proposed operation would affect approximately 332 acres of surface area, including nearly 198 acres of mineral removal to facilitate the recovery of approximately 2.6 million tons of coal available in the Winifrede, Chilton Rider, Chilton, Hernshaw Rider and Hernshaw coal seams. Mineral extraction would be accomplished utilizing contour, mountaintop, and highwall /auger mining techniques. The proposed operation would generate nearly 38 million cubic yards of overburden (including the 27% swell factor) of which roughly 17 million cubic yards would be placed on the mined areas as backfill. The remaining approximate 21 million cubic yards of excess overburden would be placed in the proposed valley fills as detailed on the **Table C** of this public notice.

According to the applicant, the purpose of the project is to construct valley fills to dispose of excess overburden (spoil) generated by surface mining operations into waters of the United States in order to achieve optimal recovery of the available coal reserves within the project area and to provide mandatory sediment control for the site.

Plans for the proposed project are attached to this public notice.

As previously described, the work was completed without prior authorization. As required by the rules and regulations governing the Department of the Army permit program, it was determined that since this work does not present an immediate threat to life or property, an After-the-Fact application would be accepted and processed. All investigations and legal proceedings will be suspended pending the outcome of the permit review process. This application will be evaluated on its own merits and no consideration will be given to the applicant's unauthorized work activities or prior expenditures.

ALTERNATIVE ANALYSIS: This project is not considered to be water dependent; therefore, the applicant is required to show that other less damaging practicable alternatives are not available that would achieve the applicant's goal. The applicant submitted an alternative analysis that is currently being reviewed. No permit will be issued until our review of the alternative analysis clearly shows that upland alternatives are not available to achieve the applicant's goal.

AVOIDANCE AND MINIMIZATION: According to the applicant, avoidance and minimization of stream impacts were primary factors in the mine planning process for the applicant's proposed operation. However, the applicant determined complete avoidance was not practicable. The applicant's minimization efforts are discussed below. The three valley fills proposed would cover areas where previous mining has occurred. This proposed project would also reclaim an existing highwall located on the applicant's adjacent permits.

A durability test was conducted and the material met the SMCRA definition of durable material (38-2-14,14g.1.B). Durable material does not slake in water to soil-size particles and is expected to minimize the potential pluming effect and sedimentation. Durable material is not expected to result in contaminants due to the reduced reactive surfaces for creating contamination. Ancillary conveyance channels, flumes and other structures, both temporary and permanent, are expected to ensure surface waters are controlled in such a manner to minimize adverse effects and all surface waters pass through appropriate treatment facilities prior to passing through various NPDES outlets.

The applicant has avoided impacts to perennial and high quality streams. Selection of the valley fill sites has been limited to ephemeral and uppermost reaches of intermittent streams. Impacts to downstream areas are expected to be minimized by the proposed sediment ponds. Best management practices would also be employed. Sediment runoff and soil erosion to the streams shall be controlled and minimized by straw bales/silt fences. Removal of existing riparian vegetation shall be restricted to the minimum necessary for project construction. The sediment ponds have been located as close to practicable to the valley fills and have resulted in a reduction of stream impacts. Effects to downstream areas would be limited by compliance with NPDES permit limits. Effluent limitations assigned to the discharge points are expected to ensure the established water quality criteria are maintained. Inspection and certification of sediment control structures by a registered engineer would occur during construction and the mining operation. Sedimentation structures, storm routing and reclamation activities would serve to lessen runoff.

The Hydrologic Reclamation Plan indicates measures would be taken to minimize disturbances to the hydrologic balance. The materials handling plan is expected to assure no acidic drainage occurs. The applicant would employ measures to prevent or control spills from fuels, lubricants or any other materials used in connection with construction and restrict them from entering the watercourse.

Runoff from any storage areas or spills would not be allowed to enter storm sewers without acceptable removal of solids, oils and toxic compounds. Best management practices for sediment and erosion control would be employed. In-stream work would not be conducted during the warm water fish spawning season, April through June, unless authorized by the WVDEP and WV Division of Natural Resources. Operation of equipment in-stream would be minimized and accomplished during low flow periods.

Compliance with the Water Quality Based Effluent Limits and tech-based limits assigned to outlets is expected to prevent adverse impacts and protect water quality standards in the receiving streams. Measures to be taken to prevent the contribution of suspended solids to surface waters would include the maintenance of the sediment control structures, ditches, berms and other structures to physically control and treat water and use of temporary and permanent vegetation. The proposed sediment control structures and prompt revegetation of disturbed areas are expected to prevent excessive concentration of suspended solids from entering area streams both on- and off-site.

MITIGATION PLAN: The applicant has submitted a compensatory mitigation plan (CMP) to compensate for the proposed permanent and temporary impacts to waters of the U.S. regulated by the Department of the Army, Corps of Engineers. The CMP uses a watershed-based approach and all proposed mitigation would be performed completely within the affected watersheds. The applicant proposes in-kind enhancement, establishment, restoration and preservation of aquatic resources. Enhancement efforts would be performed in and along the riparian corridor surrounding Alum Creek at a mitigation ratio of 2:1 to offset intermittent stream impacts. Establishment measures would be designed to create ephemeral stream channels within sediment conveyances along the surface mine perimeter at a mitigation ratio of 1:1 to offset ephemeral stream impacts. The established ephemeral mitigation channels would connect to the surface water tributaries of navigable waters of the U.S. Restoration (reestablishment) efforts would be performed in the stream segments temporarily affected by sediment pond construction as well as segments of Alum Creek. Natural stream design techniques (i.e. Rosgen) would be incorporated into the designs of the proposed mitigation projects to determine the appropriate geomorphological characteristics. Preservation efforts would involve permanently protecting 0.291 acre of emergent and 0.154 acre of scrub-shrub wetland areas delineated along Alum Creek via an appropriate real estate instrument. A minimum of a 50-foot vegetated riparian zone would be established along the mitigation sites. The applicant also proposes to permanently protect the stream mitigation sites via an appropriate real estate instrument.

WATER QUALITY CERTIFICATION: A Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain certification from the West Virginia Department of Environmental Protection.

HISTORIC AND CULTURAL RESOURCES: The National Register of Historic Places (NRHP) has been consulted and it has been determined there are no properties currently listed on the register that are in the area affected by the project. A copy of this public notice will be sent to the State Historic Preservation Office for their review. Comments concerning archeological sensitivity of a project area should be based upon collected data.


ENDANGERED / THREATENED SPECIES REVIEW: This project is located within the known or historic range of the endangered Bald eagle (*Haliaeetus leucocephalus*), Indiana Bat (*Myotis sodalis*), and Virginia Big-eared Bat (*Plecotus townsendii virginianus*). The Huntington District has determined this project is not likely to jeopardize the continued existence of any endangered or threatened species based on the fact any habitat modifications affecting threatened and endangered species are authorized as part of the WVDEP's permitting process under SMCRA. This notice will serve as coordination with the U. S. Fish and Wildlife Service regarding threatened or endangered species. This public notice serves as a request to the U.S. Fish and Wildlife Service for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may be present in the area which would be affected by the activity, pursuant to Section 7(c) of the Endangered species Act of 1972 (as amended).

PUBLIC INTEREST REVIEW AND COMMENT: Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activity.

Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. In addition, the evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency, under the authority of Section 404(b) of the Clean Water Act. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other inters factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

If you have any questions concerning this public notice, please call Mrs. Teresa Spagna of the South Regulatory Section at 304-399-5710.


Ginger Mullins, Chief
Regulatory Branch

(W)

Table A
Min, Inc.
Patton No. 11 Surface Mine
Watershed Acreages for Proposed Valley Fills

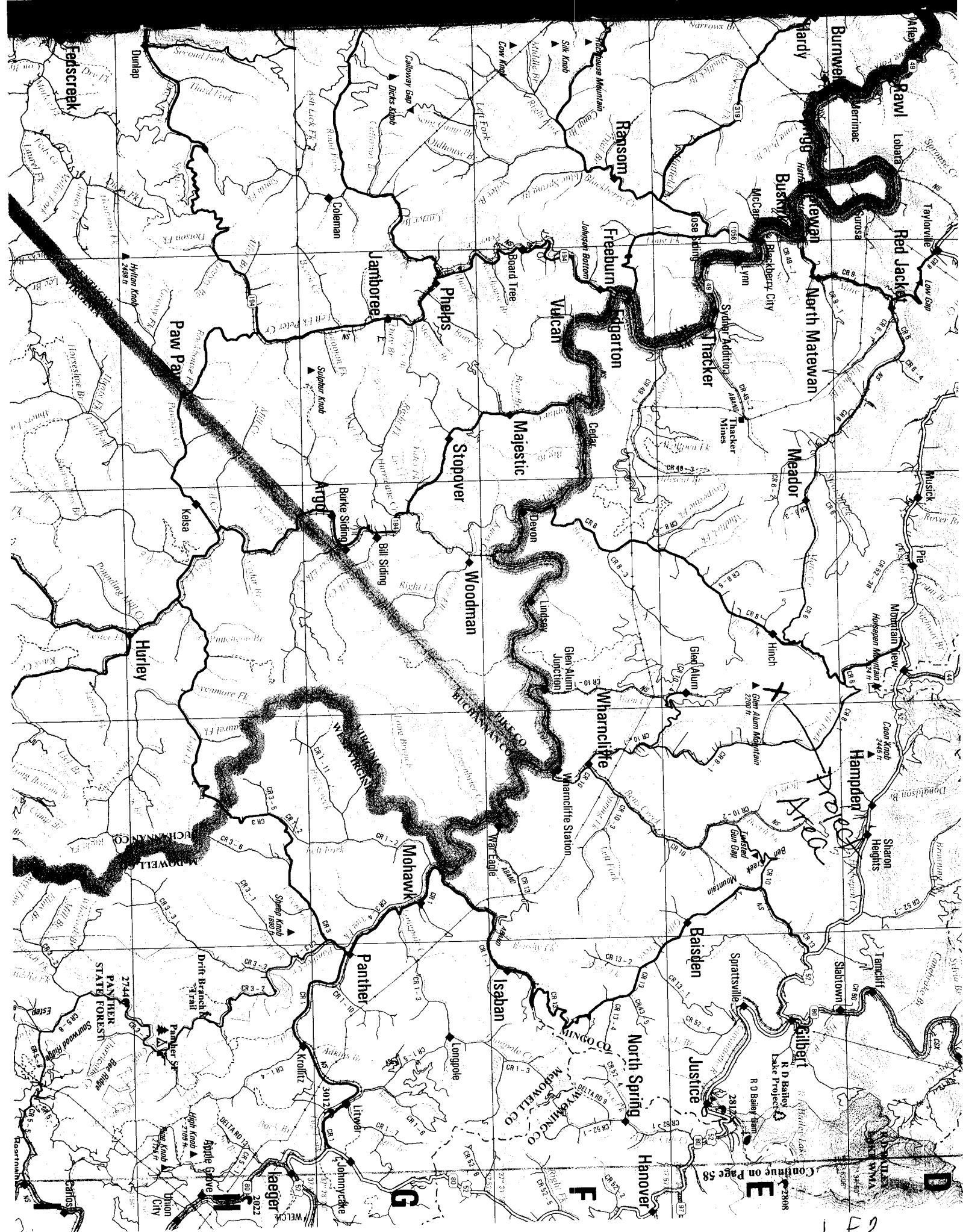
PROPOSED VALLEY FILL	WATERSHED ACREAGE (ACRES)
Valley Fill 1	56 acres
Valley Fill 2	115 acres
Valley Fill 3	105 acres

Table B
Min, Inc.
Patton No. 11 Surface Mine
Proposed Mining Activities and Associated Stream Impacts

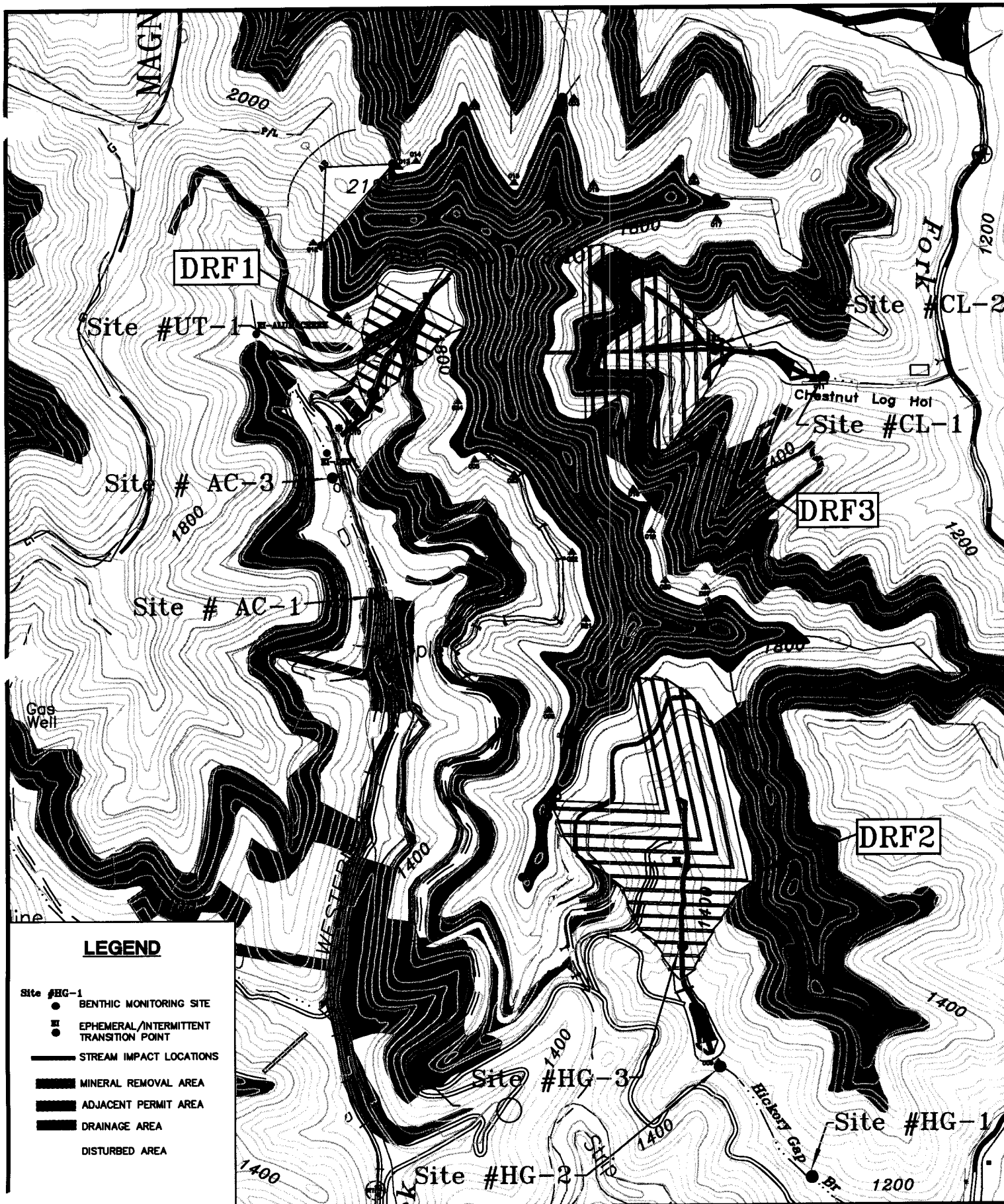
PROPOSED MINING ACTIVITY	STREAM LOCATION	PERMANENT IMPACT (LINEAR FEET/ACRES)		TEMPORARY IMPACT (LINEAR FEET/ACRES)	
		INTERMITTENT	EPHEMERAL	INTERMITTENT	EPHEMERAL
Valley Fill 1	Unnamed Tributary of Alum Creek		1629'/0.124 acre		400'/0.007
Sediment Pond J	Unnamed Tributary of Alum Creek				
Valley Fill 2	Hickory Gap Branch	950'/0.231 acre	707'/0.129 acre		
Sediment Pond I	Hickory Gap Branch			850'/0.26	
Valley Fill 3	Chestnut Log Hollow	700'/0.160 acre	1,440'/0.212 acre		
Sediment Pond K	Chestnut Log Hollow			700'/0.117	
Total		1650'/0.391 acre	3,776'/0.465 acre	1,550'/0.377 acre	400'/0.007 acre

Table C
Min, Inc.
Patton No. 11 Surface Mine
Total Fill Volume/Valley Fill Disposal Site

Disposal Site	Fill Volume Cubic Yards
Valley Fill 1	2,370,035.20
Valley Fill 2	12,318,383.74
Valley Fill 3	7,246,140.38
Total	21,934,559.32



10F2



**FIGURE 2A
STREAM DELINEATION OVERVIEW**

**MIN, INCORPORATED
404 PERMIT APPLICATION
MINGO COUNTY, WV**

DATE: 6/7/04
SCALE: 1"=1200'
DESIGNED: RHM
DRAWN: RSF

Prepared by:
MARSHALL MILLER
F23107 F23107-6-3-04.DWG